

ARTICLE APPEARED
ON PAGE A21

NEW YORK TIMES
23 SEPTEMBER 1981

Judge in Spy Case Refuses to Dismiss Charges

ANDREWS AIR FORCE BASE, Md., Sept. 21 (AP)—Despite finding that two interrogators had promised Second Lieut. Christopher M. Cooke immunity from prosecution if he would cooperate, a military judge today ordered the former missile control officer to stand trial for espionage.

The judge, Lieut. Col. David Orser, said Lieutenant Cooke had not got the immunity promise from the only man entitled to give it: Gen. Richard Ellis.

General Ellis, now retired, was commander of the Strategic Air Command when Lieutenant Cooke was arrested last May. The 26-year-old lieutenant was deputy commander of a Titan 2 nu-

clear missile launching crew at the time.

One of Lieutenant Cooke's attorneys, Kenneth Fishman, said Colonel Orser's decision would be immediately appealed to the Court of Military Appeals and asked the colonel to delay the court-martial for that appeal, but the colonel refused.

Confession to Be Suppressed

Colonel Orser said the remedy for the harm done to Lieutenant Cooke by the unauthorized promise was not dismissal of the charges but suppression of the confession.

The military judge said he would not

allow the confession to be introduced as evidence, nor would he allow the introduction of any evidence derived from the confession.

Lieutenant Cooke had sought dismissal of the charges against him on the ground that he had been offered complete immunity by Brig. Gen. Claude Teagarden of the Air Force in return for a full and truthful statement about his contacts with agents of the Soviet Union.

But after he accepted the deal, made a confession and verified it by a polygraph test, the lieutenant was charged with three counts of conveying or trying to convey defense information to the Soviet Union and 11 counts of failing to report contacts with Soviet agents.

Mr. Fishman said he was not entirely disappointed with Colonel Orser's ruling because the judge had upheld several defense contentions that might be critical in arguments before the appellate court.

For one thing, the military judge agreed with the defense that General Teagarden, the top lawyer at SAC, had authorized an offer of immunity to Lieutenant Cooke.

Capt. Francis Pedrotty, the defendant's Air Force lawyer, and Lieut. Col. Jerome Hoffman, the Air Force investigator who questioned Lieutenant Cooke, both testified that General Teagarden authorized the immunity in telephone conversations with them on May 9.

The general said he only offered Lieutenant Cooke a chance to resign from the Air Force if he took the polygraph test and it verified an initial statement he gave to the investigators on May 7 in which he portrayed himself as a "naive schoolboy" seeking help with a research paper.

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